

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 1-4 and 63-78.

The following claims are *independent*: 64, 72, 77 and 78.

The following claims have previously been *cancelled* without prejudice or disclaimer: 5-62.

Please *add new* claim 78 and please *amend* claims 2, 64, 72 and 77; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices, Applicant submits that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that these new claims and/or claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Claim Rejections - 35 U.S.C. § 112

The Office Action rejected claims 2-4 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 2 to correct the informality. This amendment was presented in the Amendment After Final filed July 8, 2009 and has

been represented in this Amendment and Response. Accordingly, applicant requests: withdrawal of this ground of rejection(s), and reconsideration and allowance of the claims.

Claim Rejections - 35 U.S.C. § 103

The Office Action rejected claims 64-69 and 71-77 under 35 U.S.C. § 103(a) as being unpatentable over Pool et al., US Patent No. 6,460,020 (hereinafter “Pool”), and in further view of Szoc et al., US Patent Publication No. 2002/0023053 (hereinafter “Szoc”). The Office Action further rejected claims 1-4, 63, and 70 under 35 U.S.C. § 103(a) as being unpatentable over Pool in view of Szoc in view of Klinge, US Patent Publication No. 2001/0042007 (hereinafter “Klinge”), and in further view of Boesch et al, US Patent No. 5,897,621 (hereinafter “Boesch”).

In the Amendment and Response to Final Office Action filed July 8, 2009, Applicant noted that Szoc was filed in the US on April 4, 2001, and that Szoc claims priority to US Provisional Application No. 60/194,587 filed on April 5, 2000. Applicant further notes that Szoc’s earliest priority date of April 5, 2000 is between Applicant’s priority dates of November 16, 2000 (Application Serial No.09/714,315) and March 16, 2000 (Application Serial No. 09/526,606). Without conceding that Szoc was filed in the US before invention by the Applicant, Applicant respectfully traverses these rejections and submits that a *prima facie* showing of obviousness has not been made and that the applied references, taken alone or in combination, fail to discuss or render obvious every element of each noted claims.

MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B) the difference or differences in the claim over the applied reference(s);
- (C) the proposed modification of the applied reference(s) to arrive at the claimed subject matter; and
- (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. (MPEP § 706.02(j))

Applicant submits that the rejections in the pending Office Action do not establish at least requirement(s) (A) and (B) of a prima facie showing of obviousness.

While Applicant maintains the arguments presented in the Amendment and Response filed on July 8, 2009, Applicant submits Pool does not discuss or render obvious at least the following element(s) as recited, *inter alia*, in amended independent claim(s) 64:

A computer-implemented method for managing a sales risk, comprising:

...

adjusting via the computer the currency price in real-time via a live pricing feed based on negotiated tolerance levels for a particular commerce participant, wherein the adjusting includes:

determining if the spot price exceeds at least one of the negotiated tolerance levels;

modifying the negotiated tolerance levels based on the determination; and

re-calculating the currency price using a predetermined equation based on the modified tolerance levels to determine the adjusted currency price;

allowing the transaction to proceed with the adjusted currency price;

...

The Office Action asserts the previously pending claimed elements are discussed in Pool (col. 6, line(s) 4 - 36) and alleges:

...Pool teaches ... adjusting via the computer ... (col. 6, lines 4-19 and 32-36; *compensating for disparity between quoted rate and real rate (real rate obtained from real time currency conversion is equivalent to rates obtained via live pricing feed as evidenced by Szoc below) by adding small percentage to the conversion rate; the price can be adjusted (higher price) to compensate for wide swings in currency conversion values and presented to the customer, the wide swings suggests that there is tolerance level in order for the price to be adjusted, any fluctuation or swing within the tolerant level will not result in any price adjustment except for the small percentage added to the conversion rate*); (Office Action, p. 3-4).

Applicant disagrees with the Examiner's characterization of the cited reference as applied to the previously pending claims and submits that the reference does not discuss or render obvious the claims as amended.

In contrast to the amended claims, Applicant submits that Pool discusses *suspending a transaction in response to wide currency fluctuations and offering a user the option to proceed by paying a higher price to reactivate the suspended transaction*. More specifically, Applicant notes that Pool discusses suspending transaction in response to wide currency fluctuation based on an operator's *opinion* "... when in the operator's opinion, currencies become unstable, transactions in one or both of the subject currencies are suspended by the system" (Pool, col. 6, line(s) 21 - 25, emphasis added). Further, Pool discusses wide currency fluctuations as being "wide swings in currency conversion values" (Pool, col. 6, lines 30 - 36). When a decision to suspend the transaction is made by the operator, the customer is notified with a message, "... a message is sent to the customer instead of a price, indicating that because of instability in the currency market, transactions in a particular currency have been suspended" (Pool, col. 6, lines 27 - 30). Applicant also notes that Pool discusses offering the customer of the suspended transaction alternative options such as, "...option of an alternative

currency, if such an alternative is feasible” or providing the customer the option to reactive the suspended transaction by paying a higher price “... the customer can be offered a higher price to compensate for wide swings in currency conversion values.” (Pool, col. 6, lines 30 - 36).

As evident from the discussion above, Pool’s method of: (1) identifying wide fluctuations, (2) suspending the transaction based on the operator’s opinion and (3) offering the customer a higher price in order to reactive the suspended transaction is fundamentally different from the claimed elements. As such, Applicant submits that Pool’s method is different from at least the claimed “adjusting ... the currency price in real-time ... determining if the spot price exceeds at least one of the negotiated tolerance levels ... modifying the negotiated tolerance levels based on the determination ... re-calculating the currency price using a predetermined equation based on the modified tolerance levels to determine the adjusted currency price [and] allowing the transaction to proceed with the adjusted currency price ...,” as recited in claim 64. Similarly, Applicant submits that Szoc’s “*method for providing real-time foreign exchange information*” (Szoc, Abstract) fails to remedy the deficiencies identified above in Pool with regard to independent claim 64. For at least the reasons discussed above, Applicant submits that the pending rejection has mischaracterized the language of the claim element and/or the applied reference(s) and, thus, has not established a *prima facie* case of obviousness.

Although of different scope than claim 64, Applicant submits that claim 72 is patentable over Pool in view of Szoc, taken alone or in combination. For example, independent claim 72 recites, *inter alia*,

A computerized system computer-readable medium storing computer-executable instructions to:

adjust the currency price in real-time via a live pricing feed based on negotiated tolerance levels for a particular commerce participant, wherein the instructions to adjust include instructions to:

determine if the spot price exceeds at least one of the negotiated tolerance levels;

modify the negotiated tolerance levels based on the determination; and

re-calculate the currency price using a predetermined equation based on the modified tolerance levels to determine the adjusted currency price;

allow the transaction to proceed with the adjusted currency price;

...

Applicant respectfully submits that at least these claim elements from independent claim 72 are not discussed or rendered obvious by the applied references for at least the reasons discussed above identifying deficiencies in the applied references with regard to independent claim 64. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this basis of rejection.

Similarly, although of different scope than claim 64, Applicant submits that claim 77 is patentable over Pool in view of Szoc, taken alone or in combination. For example, independent claim 77 recites, *inter alia*,

A computerized system, comprising:

...

means for adjusting the currency price in real-time via a live pricing feed based on negotiated tolerance levels for a particular commerce participant, wherein the means for adjusting further includes:

means for determining of the spot price exceeds at least one of the negotiated tolerance levels;

means for modifying the negotiated tolerance levels based on the determination; and

means for re-calculating the currency price using a predetermined equation based on the modified tolerance levels to determine the adjusted currency price;

means for allowing the transaction to proceed with the adjusted currency price;

...

Applicant respectfully submits that at least these claim elements from independent claim 77 are not discussed or rendered obvious by the applied references for at least the reasons discussed above identifying deficiencies in the applied references with regard to independent claim 64. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this basis of rejection.

Further, although of different scope than claim 64, Applicant submits that newly added claim 78 is also patentable over Pool in view of Szoc, taken alone or in combination.

For example, independent claim 78 recites, *inter alia*,

A computer-implemented method for managing a sales risk, comprising:

comparing the monitored spot price with the negotiated first and second tolerance values to determine if the currency price requires an adjustment;

automatically adjusting via the computer the currency price in response to the determination by calculating a modified currency price based upon pre-selected first and second tolerance levels;

completing the transaction with the adjusted currency price; and

...

Applicant respectfully submits that at least these claim elements from independent claim 78 are not discussed or rendered obvious by the applied references for at least the reasons discussed above identifying deficiencies in the applied references with regard to independent claim 64.

Furthermore, Applicant submits that claims 1-4, 63, 65-71, 73-77, which depend directly or indirectly from independent claims 64, 72 and 77, are also not discussed or rendered obvious by Pool or Szoc, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to the independent claims. Furthermore, Kingle or Boesch, which fail to remedy the deficiencies of Pool or Szoc, also fail to discuss or render obvious the claimed elements. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this basis of rejection.

CONCLUSION

Consequently, the reference(s) cited by this Office Action and/or any previous office action(s) (hereinafter "Office Action(s)") do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any Official Notice that has been taken and/or (mis)characterizations of claims made in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 1-4 and 63-78, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements and/or bases for rejection were not discussed as they have been rendered moot based on the above amendments and/or

remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art and reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to any Office Action(s) objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-613CP1. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-613CP1.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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